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CRIME AND ITS REMEDY

When sounding the depths of crime in our country, it should be kept in mind that consideration for the sanctity of human life in a nation or community furnishes the criminologist an established measuring rod. Taking the number of homicides in a section, the criminologist can very accurately calculate the number of other crimes of violence committed in the same locality.

Crimes of violence, robbery and like, increase or decrease in exact proportion to the great tragedy. The section where human life is least regarded becomes heaviest afflicted with criminals. With rare exception every armed robber or burglar is instinctively a killer

The psychology of the problem is simple. Fear and hatred are twin brothers. Every criminal fears his victim and consequently hates him while committing an offense against him. And under our method of punishment and infliction of penalties it is safer to have killed the victim, if caught. The dead man can not identify and the penalty will not be much worse even if convicted of murder. The criminal takes advantage of the very natural reluctance of a jury to take human life. Those conceptions he lacks he knows the jury possesses. These are the reasons why many petty crimes end in unprovoked murder.

Skilled observers reckon there are in this country three-hundred and fifty-two thousand men and women who live partly or wholly by crime and the number is increasing with astounding rapidity. These authorities claim that thirty thousand criminals are now living in New York City, and that more than ten thousand infest Chicago. This same proportion will hold good in all of the larger cities. It is an amazing fact that the chief of police in any large city can figure out for you about how many people will be robbed, stolen from and assassinated in his city the following year.

The American Bar Association in their recent pilgrimage to Europe found that in England and Wales with their forty million inhabitants, that not more than sixty-three murders had been committed in the last year In France, where a little more hesitancy is felt in the infliction of punishment there were tried only eighty-three first degree murderers. By way of contrast, in England and Wales a murder was committed once a week, while, in our country, during every hour of the day and night a victim sank under the fatal weapon of an assassin.

Investigation will show that not more than ten of the sixty-three British murders were committed in robberies while three thousand of the murders in our country were so perpetrated. Since 1919, the French government has felt too poor to publish the judicial statistics but they have been collected and carefully preserved. Statistics are bothersome because they require concentration, but crime records often become electric facts.

As an illustration, nothing more clearly could manifest the great French nation's recuperative power than these same collected records of 1919. With the retiring footsteps of the hated Hun still echoing in their ears, then at that distressed time the great French people and government gripped firmly and with perfect control the administration of justice and continued the protection of life and property by the means of their excellent court machinery

For the ensuing period no exact records have been kept of the crimes reported in that country, but a fair idea may be secured from the number of offenders tried in the courts. In all of the Republic that year there were tried only eighty-three cases of murder, fifty-seven of which terminated in convictions. There were thirty-

four instances of manslaughter accompanied with other crimes and eight cases of patricide, but strangely one hundred and twenty-five cases of infanticide were charged in the courts, sixty-three of which were proven; so that throughout the entire Republic of France only three hundred and eighty-five accusations of actual unlawful killings of all degrees stood officially charged in the assize courts.

In 1921, Judge Marcus Kavanagh, of the Superior Court of Chicago, gathered and checked up the crime reports from forty-eight representative American cities containing a population of about eighteen millions. Not all of the larger cities were included but every part of the country was covered. He found that those eighteen million people in those cities had suffered in 1920 from over twelve thousand robberies, over eight thousand burglaries and over two thousand unlawful homicides.

From this it is to be gathered that in the whole country that year there were reported to the police more than ten thousand murders, thirty-two thousand burglaries and forty-nine thousand robberies. This takes no account of the large number of crimes not reported to the police. In that same year in England and Wales only two hundred and eleven case of robbery were reported to the police. In France only forty-seven cases of robbery were brought to the assize for trial. One hundred and twenty-one persons stood charged with these forty-seven crimes as principals or accomplices, ninety-four were convicted and twenty-seven acquitted.

If any one should inquire why these awful unlawful homicides occur so frequently in the United States and so seldom in other civilized countries, the answer will be found in the contrast between the certainty and finality of justice of the different countries. Most especially the certainty.

Canada affords a good example. It is a common threat among the criminal element in the country to the north of us to tell one they might hate: "Wait till I get you across the line." Many a slayer's hand has been stopped in a number of instances in Canada by the cry of some thug's pal: "Don't, remember you are in Canada!" This shows why only thirteen out of every one million inhabitants die by assassination in Canada while one hundred and more die for every million in the United States. In Canada the mandate of the law comes first and the certainty of punishment is assured.

According to statistics ten thousand men and women today innocent of blood will next year become assassins; fifty thousand young men and boys, today honest and decent will go wrong and every year it seems that the list will grow in terrible proportion.

The administration of our overburdened legal machinery bears the largest responsibility for this prospect. But what can the Bar Associations of the country do about it? What can the lay public do? Nothing more than educate themselves and the youth of the land into a fine respect of the law.

The remedy lies in the certainty of punishment more than the punishment itself. No one with a semblance of intelligence would commit an unlawful homicide possessed of the knowledge that the rest of his life would be spent behind prison walls. Cruel, inhuman and un-Christian penalties so repugnant to all are uncertain and have in the history of penology proved futile. In the darker ages when many inhuman punishments were inflicted crime flourished. If necessary, limit or modify the executive's pardoning power. Do away with the barbarous capital penalty, but insure certainty of punishments. The abolishment of capital punishment will secure more convictions and more convictions, coupled with certainty of serving sentence, will bring an unbelievable reduction in crimes of violence.

GORDON W. CHAMBERS.

NOTES OF IMPORTANT DECISIONS

PORTABLE GARAGE AS A FIXTURE.—The Supreme Court of Wisconsin, in the case of Hanson v. Ryan, 201 N. W. 749, holds that under the rule that a tenant can remove what he has added if it can be done without injury to the freehold unless he has made it the part of the original, the holding as matter of law that a portable garage was a part of the realty was not warranted.

"Undoubtedly, the garage in question was personal property before it was placed on the land of the defendant. One of the questions presented is whether on the facts stated in the complaint it became such an appurtenance of the freehold that it could not be severed without violation of the rights of the defendant. It is not a question arising between a grantor and a grantee, but one in which the right of a landlord and a third person are to be considered. When chattels are attached to the freehold, a stricter rule has generally been applied in holding them to be an incident of the land as against a grantee or mortgagee than when the same arises between a landlord and a tenant. The courts seem to have adopted the view that tenants should not be discouraged from making improvements for their own use temporarily by forfeiting their right to remove articles when such removal causes no injury to the land. Many illustrations might be given in which it has been held that articles annexed to a building or the land by a tenant remain personal property as between him and the landlord even though a different rule might obtain as between grantor and grantee. Nor is the rule necessarily different where machinery or other articles have been affixed to the freehold provided their removal would leave the premises in as good condition as they were originally. 11 R. C. L. 1076; Tiffany, Landlord and Tenant, § 240; McAdam on Landlord and Tenant, § 218; O'Donnell v. Hitchcock, 118 Mass. 401; Baringer v. Evenson, 127 Wis. 36, 106 N. W. 801. A general rule is thus stated in McAdam on Landlord and Tenant, on page 801:

" 'In general it may be said that what a tenant has added he may remove, if he can do so without material injury to the premises, unless he has actually built it in so as to make it an integral part of what was there originally.'

"This liberal rule in favor of tenants has been most often applied in the case of trade fixtures and domestic and ornamental fixtures, but there seems no good reason why it should be so strictly confined to those classes as to work serious injustice. Perhaps since the automobile has now become so necessary to domestic and family comfort and convenience, there is no good reason for holding as a matter of law that a portable cover for an automobile is part of the realty, while a different rule is applied to so many of the articles which are held removable from a house or barn or place of business. For illustration of the liberal rule extended to tenants, see McAdam on Landlord and Tenant, § 218, and Tiffany on Landlord and Tenant, § 240b."

ERECTION OF NEGRO CHURCH NOT ENJOINED AT SUIT OF WHITE NEIGHBORS.—In Spencer Chapel M. E. Church v. Brogan, 231 Pac. 1074, decided by the Supreme Court of Oklahoma, it appeared that a Negro church organization bought property in that part of a city occupied exclusively by Negroes, and built a church building thereon, and used it for religious worship and social gatherings until the church was destroyed by fire, and thereafter continued to hold their services in a small building on the property, and had let a contract for building a new church, when, at the suit of white people who had bought property near the church property subsequent to the building of the old church, the organization was enjoined from constructing a new church on the site of the old, upon the ground that it would constitute a nuisance and thereby decrease the salable value of their property. Held, such judgment is contrary to law, equity, and good conscience, and will be reversed.

In this respect the Court said:

"The evidence in this case shows that this church has been conducted in no disorderly way; in fact, it is not sought to enjoin this church from conducting its services as they have been conducted in the past. The sole object is to prevent the construction of the new church, and the reason therefor is made clear by the evidence. The plaintiffs have bought property and established their residences in what was a negro community at the time the brick church was built. If this congregation should be prohibited from constructing the church building, no doubt the negro population in that particular community would gradually grow less. The negro is of a social and religious nature. Their social gatherings are usually at the church. The church is their social or community center. If they are required to build their church in some other community, no doubt their population will trend in that direction. This appears to be the theory of the plaintiffs. No doubt if such

should be the result, and the plaintiffs permitted to sell their property to white people for residence purposes, they would derive a greater profit from their investments. They do not seek to enjoin the defendants from holding their church services and other social gatherings with the incident noise complained of, but seek only to enjoin the building of the church upon the ground that it will depreciate the salable value of the property. A court of equity will not lend its aid to such an undertaking. These plaintiffs and all their witnesses bought their property in the vicinity of this church after the defendants had bought the property and built their church, knowing it was being used and would be used for that particular purpose. As the plaintiff, Kirschner, expressed it, he bought it with his 'eyes open.' Plaintiffs offered evidence to show, and argue in their brief, that they have tried to buy this property, but have failed. They say in their brief that the evidence discloses that the defendants in error have used all reasonable means to purchase the property, offering therefor a price far in excess of its true value. The evidence shows that they are willing to pay the true value of the property, provided they are permitted to say what that true value is. The contention that it is an effort on the part of the trustees to build a negro church in a white community is not sustained by the evidence, but the evidence does show that it is an attempt upon the part of the plaintiffs to change what was a negro community at the time the original church was built, and for a long time thereafter, into a white community for the purpose of increasing the salable value of their property."

RAILROAD EMPLOYEE PREPARING LUBRICATING MATERIAL HELD ENGAGED IN INTERSTATE COMMERCE.—A railroad employee, who was injured while preparing lubricating material preparatory to lubricating engines used in interstate commerce and others used in intrastate commerce, was held in Stone v. New York Central R. Co., 207 N. Y. Supp. 353, decided by the New York Supreme Court, Appellate Division, to have been injured in interstate commerce In part, the Court said:

"This claim should have been dismissed, because the claimant was engaged in work pertaining to interstate commerce. His duty was to grease or lubricate engines as they were about to start on their trips. His duty applied to all engines, whether they were about to haul interstate or intrastate trains. On the morning of the accident he began work about 8 o'clock. He was injured 15 or 20 minutes thereafter. With his hands he removed the dope or lubricating material from the container where it was kept into two pails, in which he was to carry the dope to the engines a short distance away. His hands being soiled by this process, after filling the pails, he seized a quantity of waste to clean his hands. In the waste was concealed a piece of wire, which cut one of his fingers, for which injury, with its results, the award has been made. He continued with his work after receiving the cut or abrasion, and greased or lubricated various engines, which at the time had been designated to haul particular trains in both kinds of commerce. His finger became infected, and resulted in a more serious injury than at the time of the accident seemed apparent.

"In Erie Railroad Co. v. Szary, 259 F. 178, 170 C. C. A. 246, the employee was an engine sander. He prepared the sand to be used and placed it in the engines, irrespective of whether they were engaged in interstate or intrastate commerce. The sand before being used, was dried in stoves kept for the purpose, and it was part of the employee's work to remove the ashes from the stove. About half an hour after sanding the last engine, he removed the ashes from the stove and carried same in a pail to an ash pit. After emptying the pail, he left it on the ground and went to the engine room to get a drink of water, and in returning was hit by an engine. It was held that it was an interstate commerce case. In affirming a judgment in his favor the Supreme Court, in 253 U. S. 86, 40 S. Ct. 454, 64 L. Ed. 794, said:

"'There are attempts here to separate the duty and assign its character by intervals of time and distinctions between the acts of service. Indeed, something is attempted to be made of an omission, or an asserted omission, in the evidence, of the kind of commerce in which the last engine served was engaged. The distinctions are too artificial for acceptance. The acts of service were too intimately related and too necessary for the final purpose to be distinguished in legal character.'

"In the present case claimant had not yet applied the dope to any particular engine, but that ground of distinction seems unimportant. He was engaged in the preparatory work, which had reference to both classes of commerce. It is not possible to separate these necessary acts of preparation with reference to the two kinds of commerce. Part of the dope in the pails could not be apportioned to one commerce and part to another. It was for use, and was to be used in both commerces."

DEPARTMENTAL PRACTICE—POWERS OF ATTORNEY*

It is frequently necessary to prepare a power of attorney before proceeding with a case in a Federal Department. The requirements governing such powers of attorney are sometimes looked upon as shrouded in mystery, especially after a power of attorney which has been thought sufficient is held otherwise upon being presented to a Department. Different reasons may exist for such a holding. The instrument may not be executed properly for use in the particular case. Perhaps a seal is required, or witnesses, or the acknowledgment may be defective. The power of attorney may embrace too much authority, or it may be too restricted. Where a power of attorney is essential, it must be filed as prescribed, before the case may be proceeded with. Nothing is more disconcerting to both client and attorney than a false start.

Rules governing powers of attorney in Departmental cases are found in the federal statutes and in the practice regulations of many of the Departments, independent establishments and individual bureaus or offices. Very few official forms have been prepared.

An analytical cross-section review of the statutes and regulations applicable to powers of attorney in Departmental cases will be of assistance in avoiding pitfalls that might otherwise be met with. Such a review will also serve to show, in one particular at least, the need for standardization in the practice before the large number of federal administrative establishments. A standardized Departmental practice would do much to clear up in the minds of the general public the fog now enveloping these offices.

The various requirements with respect to our subject may be said to arrange themselves in an ascending scale, as follows:

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(1) No power of attorney required. (A power of attorney is necessarily a writing. Under this head verbal authority is sufficient.)

(2) Power of attorney required, without more. (Neither seal, witnesses nor acknowledgment necessary.)

(3) Power of attorney required to be under seal, and acknowledged. (No witnesses.)

(4) Power of attorney to be required under seal, executed in presence of two witnesses, and acknowledged.

(5) Power of attorney required to be under seal, executed in presence of two witnesses, and special form of acknowledgment prescribed.

If the foregoing classification be borne in mind during the reading of this article, it will be found more understandable.

Unless placed elsewhere by special requirement, a case will fall under the first class. However, the authority of the attorney may at any time be questioned. The right to insist upon satisfactory evidence of the authority of the attorney to represent the person for whom he appears is always reserved. Therefore, even in the absence of special requirement, it is always better to have written evidence of authority.

Underlying Principles—It was Lord Coke who said: "'Attorney' is an ancient *English* word, and signifieth one that is set in the turne, stead, or place of another: and of these some be private and some be publike, as attorneys at law, whose warrant from his master is *ponit loco suo talem attornatum suum*, which setteth in his turne or place such a man to be his attorney."

The distinction between a power of attorney and a warrant of attorney is pointed out in Treat v. Tolman.[1]

An attorney or an agent may be verbally vested with authority to represent his principal, unless there be special requirement that to do the particular act the attorney must hold power or warrant of attorney.

(1) 113 Fed. 892, 51 C. C. A. 522.

In Townsend v. Chappell[2] it is said respecting agents:

"Agents are special, general, or universal. Where written evidence of their appointment is not required, it may be implied from circumstances. These circumstances are the acts of the agent and their recognition or acquiescence by the principal. The same considerations fix the category of the agency and the limits of the authority conferred."

In Osborn v. Bank of the United States,[3] it is said respecting attorneys at law:

"Natural persons may appear in court, either by themselves or by their attorney. But no man has a right to appear as the attorney of another, without the authority of that other. In ordinary cases, the authority must be produced, because there is, in the nature of things, no prima facie evidence that one man is in fact the attorney of another. The case of an attorney-at-law, an attorney for the purpose of representing another in court, and prosecuting or defending a suit in his name, is somewhat different. The power must indeed exist, but its production has not been considered as indispensable. Certain gentlemen, first licensed by government, are admitted by order of court, to stand at the bar, with a general capacity to represent all the suitors in the court. The appearance of any one of these gentlemen in a cause, has always been received as evidence of his authority; and no additional evidence, so far as we are informed, has ever been required. This practice, we believe, has existed from the first establishment of our courts, and no departure from it has been made in those of any State, or of the Union."

These principles apply to attorneys and agents appearing before the federal departments. In many instances, written authority is neither called for by the Departments, nor necessary to constitute the relationship of attorney and client or of principal and agent.

On the other hand, a number of special rules and requirements exist. Some of these requirements apply generally to all Departments. Others are promulgated with respect to particular Departments, or particular classes of cases, or particular offices.

(2) 12 Wall. 681, 683, 20 L. Ed. 436, 437.
(3) 9 Wheat. 738, 829-830, 6 L. Ed. 204, 226.

Act of June 29, 1906—Comparatively few powers of attorney require acknowledgment, but where an acknowledgment is required, it is imperative to comply with the *Act of June 29, 1906*.[4] This act is also section 558 of the *Code of Laws of the District of Columbia*, and contains this provision:

" . . . No notary public shall be authorized to take acknowledgments, administer oaths, certify papers, or perform any official acts in connection with matters in which he is employed as counsel, attorney, or agent or in which he may be in any way interested before any of the Departments aforesaid."

The Court of Appeals of the District of Columbia has held that a notary public appointed in one of the States is not authorized to certify in his official capacity to an instrument filed by him in one of the government departments as attorney for the party to whom he administered the oath. This was in the case of Hall's Safe Co. v. Herring-Hall-Marvin Safe Co.[5] On page 504, the Court said:

"It is to be borne in mind that the Departments of the government are located in the District of Columbia. Nothwithstanding the fact that a paper, or instrument of whatsoever nature intended for presentation to a Department for action, may be prepared by an attorney in any State, and verified by an officer qualified to administer oaths in the same, it has no effect until presented. All proceedings relating thereto are conducted in the Department and under its supervision. The actual practice is in the District of Columbia."

Section 3477 Revised Statutes—The most important of all provisions respecting powers of attorney is section 3477 of the *Revised Statutes*, which reads:

"All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and

(4) 34 Stat. 622.
(5) 31 App. D. C., 498.

executed in the presence of at least two attesting witnesses, after the allowance of such a claim the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments, and powers of attorney, must recite the warrant for payment, and must be acknowledged by the person making them, before an officer having authority to take acknowledgments of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgment, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same."

This statute is doubly important. It is important, first, because of its prohibitions, and second, because of its requirements.

Of this statute it was said in Ball v. Halsell:[6]

"At the first term of this court after the passage of the act of 1853, it was said by this court, speaking by Mr. Justice Grier, that 'this act annuls all champertous contracts with agents of private claims.' Marshall v. Baltimore & O. R. Co., 57 U. S. 16 How. 314, 336 (14:953, 962). And the act has since been held by this court to include all specific assignments, in whatever form, or any claim against the United States under a statute or treaty, whether to be presented to one of the executive departments, or to be prosecuted in the court of claims; and to make every such assignment void, unless it has been assented to by the United States."

This act, however, does not prohibit the employment of an attorney at law under a contingent fee agreement, which agreement provides that the fee shall be a lien upon a draft when issued by the government in payment:[7]

In Houston v. Ormes,[8] an attorney's fee was declared an enforceable equitable lien upon a fund in the Treasury of the United States appropriated by Congress to pay a claim. Said the Court, respecting the above statute:

"As has been held many times, the object of Congress in this legislation was to protect the government, not the claimant; and it does not stand in the way of giving effect to an assignment by operation of law after the claim has been allowed."

A form of power of attorney prepared by the former First Comptroller of the Treasury, which meets the requirements of this statute, and which is of long standing, is here set forth.[9]

Section 2436 Revised Statutes (Bounty Warrants)—Similar in some respects to Section 3477 Revised Statutes, but of more limited application, is Section 2436 Revised Statutes, which provides:

(9) Power of Attorney to Collect Money Due on Draft to an Individual.

KNOW ALL MEN BY THESE PRESENTS, That I, ..., of (residence), of the county of..... and State of....., do hereby make, constitute, and appoint..... ....., of (residence), my true and lawful attorney, for me and in my place and stead, to indorse my name, on United States Treasury Draft No. ....., dated ....., 19....., for ..... dollars, issued on (kind of) Warrant No. ....., and to receive and receipt for the money, giving my said attorney full power to do everything whatsoever, necessary under the statutes or executive regulations, as fully as I could do if personally present, hereby ratifying and confirming all that may be done by my said attorney by virtue hereof.

In witness whereof, I have hereunto set my hand, the ..... day of ....., 192.....

..... (Seal).

Signed in the presence of—

.....

.....

(Two witnesses.)

State of ....., County of.....—ss:

Be it known, That on the ..... day of ....., 192....., before me, ..., personally appeared ....., to me personally well known to be the identical person named in the foregoing power of attorney, who, in my presence, subscribed and acknowledged the said power of attorney to be his act and deed; and I do hereby certify that the said power of attorney was read and fully explained to the said ..... at the time of acknowledgment, and that he then declared that he fully understood the same and was satisfied therewith.

In testimony whereof, I have hereunto set my hand and affixed my ..... seal, the day and year aforesaid.

To be acknowledged before an officer having authority to take acknowledgment of deeds.

This instrument must be signed in the presence of two persons, who must sign their names as witnesses.

The residence of both parties must be distinctly stated.

The indorsement by the attorney:

(Name of payee.)

.....,
Attorney-in-Fact.

By .....

(6) 161 U. S. 72, 78, 40 L. Ed. 622, 623.

(7) Roberts v. Consaul, 24 App. D. C. 551, 553, 560.

(8) 252 U. S. 469, 473-4, 64 L. Ed. 667, 670.

"Sec. 2436. All sales, mortgages, letters of attorney, or other instruments of writing, going to affect the title or claim to any warrant issued, or to be issued, or any land granted, or to be granted, under the preceding provisions of this chapter, made or executed prior to the issue of such warrant, shall be null and void to all intents and purposes, whatsoever; nor shall such warrant, or the land obtained thereby, be in any wise affected by, or charged with, or subject to, the payment of any debt or claim incurred by any officer or soldier, prior to the issuing of the patent."

Section 1576 Revised Statutes (Navy Pay)—Section 1576 Revised Statutes should be included in this review. This statute provides:

"Sec. 1576. Every assignment of wages due to persons enlisted in the naval service, and all powers of attorney, or other authority to draw, receipt for, or transfer the same, shall be void, unless attested by the commanding officer and paymaster. The assignment of wages must specify the precise time when they commence."

Revenue Stamp Tax—The Revenue Act of 1924[10] prescribes a stamp tax upon powers of attorney as follows:

"10. Power of attorney granting authority to do or perform some act for or in behalf of the grantor, which authority is not otherwise vested in the grantee, 25 cents. This subdivision shall not apply to any papers necessary to be used for the collection of claims from the United States or from any State for pensions, back pay, bounty, or for property lost in the military or naval service, nor to powers of attorney required in bankruptcy cases nor to powers of attorney contained in the application of those who become members of or policyholders in mutual insurance companies doing business on the inter-insurance or reciprocal indemnity plan through an attorney in fact."

This stamp tax is upon the instrument itself, and not upon the number of persons executing the power of attorney.

Penal Provisions—Congress has declared that the forging of a power of attorney, as well as of many other instruments, is a crime, and also that to have possession of a forged power of attorney, knowingly, and with intent to defraud the United States, is a crime.[11]

Court of Claims—While the Court of Claims is not an executive department, yet most of the cases which come before this Court are the result of departmental action. Therefore, we include in this review rule 6 of the Rules of the Court of Claims, which reads:

"Suits may be commenced by the claimant in person or an attorney of this court. If the claimant is represented by an attorney, an employment in writing must be filed with the clerk, and its execution must be proved or acknowledged before an officer authorized to take acknowledgments of deeds."

Treasury Department—Among the regulations governing practice before the Treasury Department, are these:

"10. Authority to prosecute claims; delivery of checks, drafts, and warrants.—

(a) A power of attorney from the principal in proper form may be required of attorneys or agents by heads of bureaus, offices, and divisions, in any case. *In the prosecution of claims involving payments to be made by the United States, proper powers of attorney shall always be filed before an attorney or agent is recognized.* No power of attorney shall be recognized which is filed after settlement made by the accounting officers, even though the settlement certificate may not yet have issued, unless such power of attorney recites that the principal is fully cognizant of such settlement and of the balance found due.

(b) In all cases originally filed in the Treasury Department and audited and allowed by the accounting officers, payable from appropriations thereafter to be made by Congress, the drafts, warrants or checks issued for the proceeds of such claims shall be made to the order of the claimant, and may be delivered to the attorney or agent legally authorized to prosecute the same, upon his filing in the Department, after the allowance of the claim, the ascertainment of the amount due, and its submission to Congress for an appropriation, written authority executed in proper legal form for delivery of such draft, warrant, or check. The authority so filed shall describe the claim by the

(10) Act of June 2, 1924.

(11) 35 Stat. 1094.

number of certificate of settlement, the amount allowed, the title of appropriation from which to be paid, the date when submitted to Congress, and the number of the executive document in which it is contained. Drafts, warrants, or checks issued for the proceeds of other like cases audited and allowed by the accounting officers but which are to be paid from appropriations available at the time of allowance shall also be made to the order of the claimant and may be delivered to the attorney or agent filing written authority, executed in proper legal form, to receive them. The Secretary of the Treasury reserves the right, however, in any case to send any draft, warrant, or check to the claimant direct. (See also paragraph 11 hereof.)

(c) Drafts, warrants, or checks issued in payment of amounts allowed by Congress in favor of corporations and individuals and appropriated for in private or special acts, and for the payment of all other claims presented directly to Congress and prosecuted before its committees, shall be made to the order of claimants and delivered to them in person or mailed to their actual postoffice addresses.

(d) Drafts, warrants, or checks issued in payment of judgments rendered by the Court of Claims, United States Courts, or other courts shall be made to the order of the judgment creditor and delivered to or sent in care of the attorney certified by the court to be the attorney of record upon his filing in the Department written authority, executed in proper legal form, after the date of the rendition of the judgment, for such disposition of such draft, warrant, or check.

(e) When judgments of the Court of Claims, United States Courts, or other courts are paid by the United States, a notice of such payment, giving number, class, and date of the draft, warrant or check, and amount paid, will be sent by the Treasury Department to the clerk of the court in which the judgment was entered in order that payment may be entered on the docket of the court.

11. Substitution of attorneys or agents and revocation of authority.—

(a) Substitution of attorneys or agents may be effected only on the written consent of the attorney or agent of record, his principal, and the attorney or agent whom it is desired to substitute, and in all cases only with the assent of the head of the bureau, office, or division concerned; provided that where the power of attorney under which an attorney or agent of record is acting expressly confers the power of substitution, such attorney or agent, if in good standing before the Department, may, by a duly executed instrument, substitute another in his stead, such other, however, to be recognized as the attorney or agent only with the assent of the head of the bureau, office, or division concerned.

(b) If a firm dissolve, or those associated as attorneys or agents by virtue of a power of attorney contest the right of either to receive a draft, warrant or check, the principal only shall thereafter be recognized, unless the members or survivors of such firm, or the associates in such power of attorney, file a proper agreement showing which of such members, survivors or associates may continue to prosecute the matter and may receive a draft, warrant or check; and in no case shall a final settlement of the matter or action toward the transmission of a draft, warrant or check to the principal be delayed more than sixty days by reason of the failure to file such agreement.

(c) The revocation by a principal or his legal representatives or authority to prosecute a matter will not be effective so far as the Treasury Department is concerned, without the assent of the head of the bureau, office or division before which the matter is pending. Where a matter has been suspended pending the furnishing of evidence for which a call has been made on an attorney or agent, failure to take action thereon within three months from the date of suspension may be deemed by the administrative officer before whom the case is pending cause for revocation of the authority of such attorney or agent without further notice to him.

(d) In the settlement of claims of officers, soldiers, sailors and marines, or their representatives, and all other like claims for pay and allowances within the jurisdiction of the General Accounting Office, the draft, warrant or check for the full amount found due shall be delivered to the payee in person or sent to his bona fide postoffice address (residence or place of business) in accordance with the provisions of the act of June 6, 1900 (31 Stat., 637)."

Income Tax Unit—Among the regulations contained in the Conference and Practice Requirements of the Income Tax Unit are the following:

"2. No attorney or agent representing claimants before this bureau or any of the units, divisions, or other offices thereof, shall appear or be recognized in any case, matter, claim or other proceeding or business pending in said bureau, division or other office thereof unless said attorney or agent representing said claimant present and file a power of attorney from his principal in proper form, authorizing him to prosecute the case, claim, or matter in question. Such power of attorney shall always be filed before such attorney or agent is recognized. In the event, however, that an attorney or agent presents himself for conference who is not familiar with the above requirements, or who can show that he has not had reasonable opportunity to obtain a power of attorney from his client, but is able to produce such evidence as will reasonably convince the conferee that he has authority to represent the taxpayer, such attorney or agent may be heard with the understanding that a power of attorney in proper form will be promptly forwarded to the Unit and that until such power of attorney shall have been filed the points raised at the conference by such attorney or agent will not be favorably considered.

"3. Any power of attorney offered in evidence in any case will be accepted only provided it is in regular form. It is considered necessary in the case of an individual that the power of attorney be signed by the taxpayer, contain language to convey his intention, not necessarily in strictly legal form, and be attested before a notary public or be witnessed before two disinterested individuals."

"7. Substitution of attorneys or agents may be effected only on the written consent of the attorney or agent of record, his principal, and the attorney or agent whom it is desired to substitute, and in all cases subject to the approval of the head of the division concerned before being effective; provided, that where the power of attorney, under which an attorney or agent of record is acting, expressly confers the power of substitution, such attorney or agent, if in good standing before the department may, by duly executed endorsement, substitute another in his stead, such other, however, to be recognized as the attorney or agent only upon the approval of the head of the division concerned."

Post Office Department—Section 10 of the regulations contained in Order No. 547 issued by the Postmaster General, provides:

"The head of any office may require an attorney to present satisfactory evidence of his authority to represent the person for whom he appears."

Department of the Interior—District Land Offices—Among the regulations prescribed to govern the appearance of agents and attorneys before district land offices is this:

"8. Every attorney must, either at the time of entering his appearance for a claimant or contestant or within thirty days thereafter, file written authority for such appearance, signed by said claimant or contestant, and setting forth his or her present residence, occupation and post-office address. Upon a failure to file such written authority within the time limited, it is the duty of the register and receiver to no longer recognize him as attorney in the case."

Indian Office—Rule 16 of the "Regulations Relating to the Determination of Heirs and Approval of Wills," provides:

"Sec. 16. Attorneys must appear before the Examiner of Inheritance, the Indian Office, or the Department of the Interior by a power of attorney from their respective clients and must be licensed attorneys admitted to practice."

Patent Office—The following regulations are contained in the "Rules of Practice in the United States Patent Office:"

"18. Before any attorney, original or associate, will be allowed to inspect papers or take action of any kind, his power of attorney must be filed. But general powers given by a principal to an associate can not be considered. In each application the written authorization must be filed. A power of attorney purporting to have been given to a firm or co-partnership will not be recognized, either in favor of the firm or of any of its members, unless all its members be named in such power of attorney.

"19. Substitution or association can be made by an attorney upon the written authorization of his principal; but such authorization will not empower the second agent to appoint a third.

"20. Powers of attorney may be revoked at any stage in the proceedings of a case upon application to and approval by the Commissioner; and when so revoked the office will communicate directly with the applicant, or another attorney appointed by him. An attorney will be promptly notified by the docket clerk of the revocation of his power of attorney. An assignment will not operate as a revocation of the power previously given, but the assignee of the entire interest may be represented by an attorney of his own selection."

Attached to the "Rules of Practice in the United States Patent Office" is an appendix of forms. Form No. 4 sets forth a blank "Petition with Power of Attorney." Form No. 25 sets forth "Power of Attorney After Application Filed,' as follows:

"To the Commissioner of Patents:

The undersigned having, on or about the ..... day of ....., 19....., made application for letters patent for an improvement in ..... (serial number .....), hereby appoints ...., of ....., in the county of ..... and State of ....., his attorney, with full power of substitution and revocation, to prosecute said application, to make alterations and amendments therein, to receive the patent, and to transact all business in the Patent Office connected therewith.

Signed at ....., in the county of ....., and State of ....., this ..... day of ....., 19....."

Form No. 26 sets forth "Revocation of Power of Attorney," as follows:

"To the Commissioner of Patents:

The undersigned having, on or about the ..... day of ....., 19....., appointed ...., of ....., in the county of ....., and State of ....., his attorney to prosecute an application for letters patent, which application was filed on or about the ..... day of ....., 19....., for an improvement in ..... (serial number .....), hereby revokes the power of attorney then given.

Signed at ....., in the county of ....., and State of ....., this ..... day of ....., 19....."

The simplicity of these two forms should be noted, especially that of the "Power of Attorney." This form contains neither seal, witnesses nor acknowledgment.

The rules of the Patent Office governing the registration of trade marks contain regulations and forms substantially similar to the regulations and forms above set forth.

Also the rules issued by the Patent Office governing the registration of prints and labels contain regulations similar to the above, but do not contain form for power of attorney.

Bureau of Pensions—The statutes of the United States are very strict in their requirements that pensions shall be paid only to the persons entitled, and shall not be paid to an attorney under a power of attorney.

However, the Bureau of Pensions has issued the following regulations governing the appearance of attorneys before the Bureau:

"12. Only a duly executed power of attorney confers upon an agent or attorney the right to appear in a case or to receive any information therein, and examiners shall, upon the receipt of a duly executed power of attorney, no other attorney having prior rights, inform the agent or attorney thereby empowered of the condition of the case and at the proper time call upon him for all the necessary proof."

"Articles of agreement and every power of attorney, in order to be recognized by the bureau, must specify the particular claim in the case to which they are intended to apply (357)."

"13. No power of attorney purporting to be executed by a claimant shall be recognized as good and valid unless the same be signed by the claimant in the

presence of two witnesses, neither of whom is the attorney of record in the claim, and acknowledged before an officer duly authorized to administer oaths for general purposes, whose official signature is certified under seal and who is not interested in the prosecution of the claim to which the power of attorney may relate (358)."

"42. No power of attorney or articles of agreement shall be accepted as valid wherein the claimant's acknowledgment is taken before an officer who is the agent or attorney named therein, or where the agent or attorney acts as one of the attesting witnesses to claimant's signature to such instrument (387)."

"4. Consent of the attorney of record to a revocation or a transfer of his power shall be required, except in such cases as are otherwise permitted by the commissioner (349)."

"5. Transfers of attorneyship must be acknowledged before some officer authorized to administer oaths for general purposes in the presence of two witnesses who must sign their names to the instrument of transfer (350)."

Department of Labor.—Subdivision 2 of Rule 31 of the Immigration Rules, contains this provision:

"Any attorney or person claiming to represent an alien, may be required to show that he is entitled to appear for the alien."

General Accounting Office—The following regulations have been promulgated by the Comptroller General:

"6. Authority to prosecute claims.—A power of attorney from the principal in proper form may be required of attorneys or agents in any case. *In the prosecution of claims involving payments to be made by the United States, proper powers of attorney shall always be filed before an attorney or agent is recognized.* No power of attorney should be recognized which is filed after settlement made by the General Accounting Office, even though the settlement certificate may not yet have issued, unless such power of attorney recites that the principal is fully cognizant of such settlement and of the balance found due."

"7. Substitution of attorneys and revocation of authority.—Substitution of attorneys or agents may be effected only on the written consent of the attorney or agent of record, his principal, and the attorney or agent whom it is desired to substitute, and in all cases subject to the approval of the Comptroller General before being effective; provided that where the power of attorney under which an attorney or agent of record is acting expressly confers the power of substitution, such attorney or agent, if in good standing, may, by a duly executed instrument, substitute another in his stead, such other, however, to be recognized as the attorney or agent only on the approval of the Comptroller General."

"If a firm dissolve, or those associated as attorneys or agents by virtue of a power of attorney contest the right of either to act, the principal only shall thereafter be recognized, unless the members, or survivors of such firm, or the associates, in such power of attorney, file a proper agreement showing which of such members, survivors, or associates may continue to prosecute the matter, and in no case shall a final settlement of the matter be delayed more than 60 days by reason of the nonfiling of such agreement."

"The revocation by a principal or his legal representatives of authority to prosecute a matter will not be effective, so far as the General Accounting Office is concerned, without the approval of the Comptroller General. Where a matter has been suspended pending the furnishing of evidence for which a call has been made on an attorney or agent, failure to take action thereon within three months from the date of suspension may be deemed by the division before which the case is pending cause for revocation of the authority of such attorney or agent without further notice to him."

Specimen Forms—The form authorized by the United States Patent Office in patent and in trade-mark cases, as set forth above, is a specimen form which may serve as a safe guide for the preparation of powers of attorney in cases falling under group 2 of the classification presented at the beginning of this review. This form represents a power of attorney in its simplicity.

Almost we may say at the other extreme is the form prepared by the former First Comptroller and set forth in Footnote 9,

which meets the requirements of Section 3477 Revised Statutes.

These two varieties of forms may be taken as typical of powers of attorney for use in departmental practice.

The regulations governing powers of attorney in a particular department or office will be better understood after knowing how the matter is governed in other administrative establishments. This review is but a specific application of the comparative method which is constantly being applied with advantage to many problems of law.

Capacity to Execute—Who should execute and the capacity to execute the power of attorney in cases of trustees, guardians, married women, executors, administrators, partnerships, corporations and in like cases of differences in persons, is to be determined as are other acts done by such persons. Evidence of the status of the principal is often called for, especially in cases of fiduciaries and corporations. To furnish such evidence in the first instance may prevent delay.

HENRY C. CLARK.

Washington, D. C.

A corn sirup manufacturing company received the following letter:

"Dear Sirs:—I have ate three cans of your corn sirup and it has not helped my corns one bit."

Young Wife: "Oh! I am so miserable, my husband has been out all evening and I haven't the slightest idea where he is."

Married Friend: "You mustn't worry, dear, you'd probably be twice as miserable, if you knew where he was."

They have real domestic tragedies in Oklahoma, as the following colloquy would indicate:

First Native: 'Bill Jenkins an' his wife hev separated."

Second Native: "Divorce?"

"Nope; cyclone."

"I meant to have tould you of that hole," said the Irishman to his friend, who was walking with him in his garden, and tumbled into a pit full of water.

"No matter," said his friend, blowing the mud and water out of his mouth, "I've found it."—Tit bits.

NEGLIGENCE—STORE ENTRANCE

BURNS v. FREDERICA GUSENBURGER & SON

207 N. Y. S. 189

(Supreme Court of New York. December 15, 1924)

Evidence that plaintiff was injured by collapse of step leading from defendant's store, as she was leaving it, held to present question of fact for jury as to defendant's negligence in keeping premises in reasonably safe condition.

Mark Goldberg, of New York City, for appellant.

Fred H. Rees, of New York City, for respondent.

LEVY, J. This is an action to recover the sum of $1,000 for personal injuries sustained by the plaintiff, which were caused, as she alleges, by the defendant's negligence and by the maintenance of a nuisance in front of its premises. The proof of the plaintiff, so far as material to this appeal, shows that she was leaving the store of the defendant, and that as she walked upon the step leading therefrom it collapsed, giving in with her, as a result of which she was physically injured. Her testimony was:

"I was coming out, and as I stepped on that step there is a board there, and it gave in with me, and I fell under this way (indicating).

"Q. You say, when you stepped on this wooden board, that it gave away with you and you fell? A. I fell."

Kurz, an officer of the defendant, testified:

"As you leave the store, there is a little step in front of the store, and there is an areaway underneath there, and above that areaway then this board."

The proof further discloses that the board was not on the sidewalk proper, but outside of the building line, and in order to enter the store one necessarily had first to step on the board which covers the grating immediately in front of the defendant's store, and then on a step that goes directly into the store. The board was placed over the grating by the defendant. As to this he testified:

"That is a cover that we put over this grating in the winter to prevent pipes from freezing, which is fastened by four cleats.

"Q. So it is a shed that you folks put over there to prevent the air and snow from going down into the cellar that you folks occupy? A. Yes.

"Q. What do you use the cellar for? A. Cleaning.

"Q. And that is used by your defendant corporation; isn't that right? A. Yes."

Upon the proofs thus adduced at the trial, the court dismissed the complaint. The plaintiff proved a prima facie case, and was entitled to go to the jury on the question of negligence. An issue of fact was squarely presented, and the trial court was not justified in dismissing the complaint under these circumstances. Dutton v. Greenwood Cemetery Co., 80 App. Div. 352, 356, 80 N. Y. S. 780, 783. There the Court said:

"That when one 'expressly or by implication invites others to come upon his premises, whether for business or for any other purpose, it is his duty to be reasonably sure that he is not inviting them into danger, and to that end he must exercise ordinary care and prudence to render the premises reasonably safe for the visit.' See, also, Larkin v. O'Neill, 119 N. Y. 221; Hart v. Grennell, 122 N. Y. 371; Ford v. L. S. & M. S. R. Co., 124 N. Y. 493; Flynn v. Central R. R. Co., 142 N. Y. 439, 445."

Within these authorities plaintiff certainly presented sufficient evidence to create an issue of fact as to whether or not the defendant was negligent. This issue should not have been taken from the jury, and it was clearly error to have done so. A consideration of the question of nuisance becomes unnecessary, in view of the foregoing.

The judgment dismissing the complaint should be reversed, and a new trial ordered, with $30 costs to the appellant to abide the event. All concur.

NOTE—*Duty and Liability of Storekeeper as to Entrances and Exits.*—The case of Mullen v. Sensenbrenner Mercantile Company, Mo., 260 S. W. 982, 33 A. L. R. 176, holds that a storekeeper is not required to use any particular kind of tile to pave the entrance to his store, but only such as will make the entrance reasonably safe. He is not bound to make the entrance absolutely safe so that persons cannot slip on it That thousands of persons have passed over an entrance to a store composed of smooth tile with a small crack in it, without injury, is sufficient to show that it was reasonably safe without special protection, so as to absolve the storekeeper from liability for injury to a patron falling upon it. In this case it was also held that the maintenance of a tile entrance to a store with a slope of five inches in five feet is not negligence which will render the storekeeper liable for injury to a customer falling upon it.

In Frost v. McCarthy, 200 Mass. 445, 86 N. E. 918, it was declared that the care required of a storekeeper on one of the principal streets of a large city as to access to the premises may be found to require a considerable degree of inspection and supervision.

Kern v. Great Atlantic and Pacific Tea Company, 209 App. Div. 133, 204 N. Y. Supp. 402, denied recovery by a customer for injuries from tripping over the saddle or sill, five-eighths of an inch high, of the doorway entrance of a store, where the undisputed testimony was that the sill was of the ordinary shape and size universally used and it was not shown to have been worn or out of repair.

In Long v. Breuner Company, 36 Cal. App. 630, 172 Pac. 1132, it appeared that the plaintiff slipped and fell on an inclined entrance as she was leaving the defendant's store, walking rapidly, such incline ranging from thirty-five to 50 degrees, constructed of concrete and having rounded shoulders. The evidence showed that the incline was not wet or slippery, and there was no foreign substance on it, and it had been chipped with a chisel to roughen the surface. It was held that the plaintiff could recover.

In Brown v. Milligan, 33 Pa. Super. Ct. 244, the plaintiff was caused to fall by slipping into a hole about six inches from the door sill of defendant's store, said hole being caused by the defendant's clerks in rolling out heavy barrels on the pavement. It was held that this could be found to be negligence on the part of the defendant, justifying a recovery by the plaintiff.

There is a note on this subject in 33 A. L. R. 322.

BOOK REVIEW

MODERN POLITICAL THEORY

A volume of one hundred twenty-seven pages entitled "Modern Political Theory," by C. E. M. Joad, was recently published by the Oxford University Press, American Branch, New York. In addition to an introduction the subject is divided under the following headings:

(1) The Idealist Theory of the State.

(2) Modern Individualism.

(3) Socialism: With Special Reference to Collectivism.

(4) Syndicatism and Guild Socialism.

(5) Communionism and Anarchism.

(6) Problems of Socialist Theory.

A factory foreman who had some 300 hands under him went into the army, became a captain of a company and could not get into the habit of calling his soldiers men, but invariably referred to them as my "hands." Imagine, therefore, the surprise of his commanding officer when the captain turned in a report of an engagement, in which he said he "had the very good fortune to have only one of my hands shot through the nose."

DIGEST

Digest of Important Opinions of the State Courts of Last Resort and of the Federal Courts.

Copy of Opinion in any case referred to in this Digest may be procured by sending 25 cents to us or to the West Pub. Co., St. Paul, Minn.

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1. **Army and Navy**—War Risk Policy.—Under War Risk Insurance Act, § 13, as added by Act Oct. 6, 1917, § 2 (Comp. St. 1918, Comp. St. Ann. Supp. 1919, § 514kk), District Court has jurisdiction of action against United States by beneficiary of war risk policy only in cases of disagreement between Bureau of War Risk Insurance and beneficiary, and petition should so allege.—Howard v. United States, U. S. D. C., 2 Fed. (2d) 170.

2. **Arrest**—Seizure of Evidence.—Seizure, without search warrant, after defendant's arrest on charge of criminal syndicalism, of his suit case, which was in the open and contained incriminating literature, held a lawful incident of the arrest, and refusal to suppress evidence found therein not error.—People v. Ruthenberg, Mich., 201 N. W. 358.

3. **Attorney and Client**—Attorney's Fee.—Section 7482, Comp. Stats. 1921, allowing a reasonable attorney fee to the prevailing party in lien foreclosure cases, is constitutional and valid.—Keaton v. Branch, Okla., 231 Pac. 289.

4. **Automobiles** — Contributory Negligence.—If pedestrian struck by automobile, while crossing street in middle of block and just before reaching curb, was negligent in proceeding without further attention to the machine, after seeing it 120 feet away when she was 19 feet from the curb, such negligence was continuous and concurrent with that of auto driver, preventing recovery under last clear chance doctrine, in the absence of any superadded circumstances.—Green v. Ruffin, Va., 125 S. E. 742.

5.——Proximate Cause of Injury.—Negligence of boy in riding on fender of automobile coal truck, which was being driven on greatly used portion of highway, could under evidence reasonably have been found to be proximate cause of his injury resulting from collision with defendant's automobile truck.—Worden v. Anthony, Conn., 126 Atl. 919.

6. **Bankruptcy**—Appeal Perfected.—Where judge filed paper, styled an opinion, on September 28, but did ont enter final orders on review of rulings of referee in bankruptcy till December 15, held appeals perfected within statutory time after December 15 would not be dismissed.—Oliver v. Garlick, U. S. C. C. A., 2 Fed. (2d) 132.

7.——Circuit Court's Jurisdiction.—Circuit court's jurisdiction of suit to foreclose chattel mortgage involving issue as to payment of another mortgage claimed by one of the defendants was not affected by mortgagor's bankruptcy and stipulation entered into in bankruptcy proceedings between plaintiff and such defendant, authorizing trustee to sell the mortgaged property.—Federal Reserve Bank of San Francisco v. Weant, Ore., 231 Pac. 134.

8.——Conveyance to Wife.—A transaction between bankrupt when notoriously insolvent, and his wife, under which the wife claims ownership and possession of property as against the trustee of the husband's estate in bankruptcy, is presumptively fraudulent, and at least calls upon the wife to maintain her legal right to the property by the plainest proof.—Prosser v. Chapman, U. S. C. C. A., 2 Fed. (2d) 134.

9.——Dissolved Corporation.—Comp. Laws Mich. 1915, §§ 13563, 13570, relating to dissolution of corporations, at least as applied to solvent corporations, is not an insolvency act, suspended by federal Bankruptcy Act, and where petition for dissolution alleged solvency, court had jurisdiction to enter decree of dissolution, which after it became final could not be attacked by corporation and creditors, so that corporation might be placed in voluntary bankruptcy.—Vassar Foundry Co. v. Whiting Corporation, U. S. C. C. A. 2 Fed. (2d) 240.

10.——Estoppel to Deny Ownership of Property.—Where bankrupt's father conveyed real estate to him and his brother by absolute deed, but intending that it should be held in trust for him, a statement, made by bankrupt to a creditor while the title stood in his name, that he owned a half interest in the property, held to create an estoppel, which precluded him from conveying the property in execution of the trust, which was invalid in law, except subject to a lien in favor of such creditor for so much of his claim as was for goods sold bankrupt after the statement was made, and in reliance thereon.—Bryant v. Klatt, U. S. D. C., 2 Fed. (2d) 167.

11.——Lien.—A trustee takes the property of the bankrupt subject to the lien of a decree for permanent alimony against him, both as to installments in arrears and future installments, and cannot sell the property except subject to such lien without the consent of the divorced wife.—Westmoreland v. Dodd, U. S. C. C. A., 2 Fed. (2d) 212.

12.——Pledge.—Bankrupt, a manufacturer of cork products, undertook to pledge certain of its materials in stock to claimant bank as security for loans. The property was placed in rooms in bankrupt's plant, nominally leased to an employee of bankrupt, who and a watchman alone had keys to such rooms, the doors of which bore signs that they were the property of such employee or "agent." The name of claimant did not appear, nor was there any sign on the outside of the building indicating the pledge. Debts were thereafter contracted. Held that there was no such delivery to and possession by claimant as to render the pledge valid as against the trustee in bankruptcy.—In re Spanish-American Cork Products Co., U. S. C. C. A., 2 Fed. (2d) 203.

13.——Preference.—Where bank, after insolvency of commission firm, credited collections and deposits by third person for firm on its overdraft created before insolvency, bank did not receive unlawful preference under Bankruptcy Law so as to entitle bankruptcy trustee to recover it, but this was authorized under Bankruptcy Act, § 68a (U. S. Comp. St. § 9652).—Steere v. Stock Yards Nat. Bank, Tex., 266 S. W. 531.

14.——Preference.—Where bankrupts for years had conducted an extensive mercantile business, with good credit standing, and had during the four months prior to bankruptcy paid out in bills $168,000, and purchased merchandise on credit to the amount of $111,000, a mercantile creditor which during that time received 26 payments in the usual course of business, held not chargeable with reasonable cause to believe that a preference would be effected thereby.—In re Solof, U. S. C. C. A., 2 Fed. (2d) 130.

15. **Banks and Banking**—Forgery.—Where one draws check in such form that it can be changed to read for larger amount without exciting suspicion of reasonably prudent person, and after delivery to payee it is so changed under circumstances constituting forgery, and paid by drawee, without knowledge of such forgery, or of facts putting reasonably prudent person on inquiry, held that drawer's negligence is not proximate cause of payment of greater amount, and loss must fall upon drawee.—Glasscock v. First Nat. Bank, Tex., 266 S. W. 393.

16.——Part Payment of Note.—As respects penalties imposed by National Banking Act, part payments of note generally, including therein usurious interest, without application thereof by agreement of parties, are not regarded as applied first to payment of interest, but if parties by agreement make such application thereof, it will be treated as if

usurious interest had been separately paid, intent of parties being controlling—Jones v. Moore, Ala., 102 So. 200.

17.——Payment to Imposter.—Bank issuing and delivering to imposter, receipt stating that draft presented by latter was received for collection for payee's account and that receipt was letter of advice only, not negotiable, and establishing no credit, held not estopped from recovering amount of its cashier's check, payable to payee of draft only, from bank paying it to imposter, on latter's forged indorsement of payees name, after receipt of check, forwarded by issuing bank in response to paying bank's request, on imposter's presentation of receipt, for payment of proceeds of draft, in absence of evidence of conduct tending to mislead paying bank. (Civ. Code, § 3104).—Bank of Italy v. First Bank of Kern, Cal., 231 Pac. 44.

18. **Bills and Notes**—Failure of Consideration.—C. S. § 3008, providing that in negotiable paper absence or failure of consideration is matter of defense as against one not holder in due course and partial failure is defense pro tanto, applies only to negotiable instruments.—Hunt v. Eure, N. C., 125 S. E. 484.

19.——Moral Obligation.—Moral obligation to pay debt, not collectible because of rule of law, such as statute of limitation, adjudication in bankruptcy, debtor's minority, or termination of indorser's liability through holder's failure to sue maker, is sufficient consideration for execution of note to secure it.—Born v. La Fayette Auto Co., Ind., 145 N. E. 833.

20.——Party in Interest.—Under Negotiable Instruments Act, one, with whom note indorsed by payee has been left for collection, may, with owner's consent, bring action thereon, being real party in interest within Comp. St. 1920, § 5580.—McDonald v. Mulkey, Wyo., 231 Pac. 662.

21. **Brokers**—Commission.—When a broker produces a purchaser, who is accepted by owner, and a valid contract is entered into, he becomes a "purchaser" within meaning of broker's contract, and his duties are at an end, and commission is earned as soon as an enforceable contract is executed.—Cannon v. Staples, R. I., 127 Atl. 145.

22.——Commission.—Where vendor of realty who had agreed to make monthly payments to broker making sale until stipulated commission was paid, or so long as purchasers continued payments, sold his equity in contract, held broker's right to monthly payments on his commission thereupon became fixed and was not defeated by purchasers' default, which no longer affected vendor.—Fertel v. Gordon, Mich., 200 N. W. 941.

23. **Carriers of Passengers**—Negligence.—The plaintiff was a passenger, waiting on the station platform of the defendant railroad company for a train. The train entered the station. The plaintiff saw the center door of a car opened and entered. The door, operated by air pressure, was then suddenly closed, pinning the plaintiff between the door and the door jamb, injuring her. Held that, upon proof of these facts, the presumption was that the door had been negligently operated by an employee of the defendant, and that it was not error to refuse to grant a motion to non-suit. —McPherson v. Hudson & M. R. Co., N. J., 127 Atl. 23.

24. **Constitutional Law**—License Tax on Vehicles. —Ordinance of county commissioners' court, levying license tax, under Acts 1915, p. 576, § 13, as amended by Acts 1923, p. 61, on vehicles used on roads in hauling logs, staves, etc., may be reasonably construed as applicable only to vehicles commonly so used, and not to vehicles only occasionally so used, and is therefore not unconstitutional as an arbitrary, unreasonable, and discriminatory classification; to "use" implying habitual action or some degree of continuity or permanence.—Ex parte Smith, Ala., 102 So. 122.

25.——Motor Vehicle Carrier Act.—Motor Vehicle Carrier Act, § 3, authorizing issuance, as matter of right, of certificates of public convenience and necessity to carriers operating in good faith at time of its enactment, and providing that such certificates to additional carriers should be granted or refused as public convenience and necessity require, is reasonable and not arbitrary classification, and is valid exercise of police power.—Gruber v. Commonwealth, Va., 125 S. E. 427.

26.——Prohibition of Business.—State may prohibit the conduct of business at hours injurious to public comfort, morals or safety, and it has large discretion in regulation and prohibition of certain kinds of business.—Alexander v. Enright, Police Com'r N. Y., 206 N. Y. S. 785.

27.——Regulation of Sale of Milk.—Provision of ordinance of village board of health requiring certain grade of milk to be produced from tuberculin tested cows, though not required by Sanitary Code, merely increased stringency of Code, and was authorized under chapter 3, regulation 14, and did not make new grade of milk.—Village of Herkimer v. Potter, N. Y., 207 N. Y. S. 35.

28. **Contracts**—Performance.—Where plaintiff, suing on contract for purchase of lumber, admitted that defendant was not in default until he failed to make delivery after transportation facilities became available in 1919, which was such unreasonable time after execution of contract in 1916 that defendant was no longer required to perform, plaintiff could not recover on theory that defendant, by sale to another in 1916, had rendered himself unable to perform before expiration of reasonable time within which performance could have been demanded had facilities become available.—Black & Yates v. Negros-Philippine Lumber Co., Wyo., 231 Pac. 398.

29. **Corporations**—Notice of Illegality of Note.—In action on corporation's note given for purchase of stock in another corporation and acquired by plaintiff as security for a loan, that plaintiff's treasurer was told that consideration for note was amount due for a stock subscription did not constitute notice of its illegality, unless absence of power to subscribe for stock was brought to plaintiff's attention.—City Coal & Ice Co. v. Union Trust Co., Va., 125 S. E. 697.

30.——Right to Vote Stock.—In determining whether French corporation holding legal title to corporate stock, beneficial interest of which is in another, has power to vote such stock, law of that jurisdiction controls.—Bouree v. Trust Francais, Etc., Franco-Wyoming Oil Co., Del., 127 Atl. 56.

31.——Sale of Stock.—Where notes given as purchase price for stock were immediately discounted, and proceeds credited to company, it constituted compliance with requirements of order of securities commission requiring cash payment, and sale was valid—Radloff v. Ruggles Motor Truck Co., Mich., 201 N. W. 200.

32. **Covenants** — Building Restrictions.—Under the evidence the court was authorized to hold that the defendant was not violating the restriction in the deed with reference to "barns, servants and other outhouses," by the erection of "garages" to be used merely for storing the private cars of occupants of the apartments to which they appertain. See Riverbank Improvement Co. v. Bancroft, 209 Mass. 217, 95 N. E. 216, 34 L. R. A. (N. S.) 730, and annotations, Ann. Cas. 1912B, 450.—Courtney v. Hunter, Ga., 125 S. E. 714.

33. **Deeds**—"Heirs of Body."—The word "forever" has a strictly technical meaning, and, when word "children" is followed by it, the two words are construed as words of limitation and not of purchase, unless there is something in instrument to indicate a different intention on part of maker. —Williams v. Ohio Valley Banking & Trust Co., Ky., 266 S. W. 670.

34. **Fixtures**—Prior Mortgage.—Boilers, smokestack, etc., installed in creamery plant, removal of which would incapacitate plant, held under Civ. Code Ga. 1910, § 3621, fixtures included within a prior mortgage of after-acquired property, which became superior to vendor's reservation of title.—In re Moultrie Creamery & Produce Co., U. S. C. C. A., 2 Fed. (2d) 129.

35. **Garnishment** — Jurisdiction. — Where judgment creditor and garnishee were within jurisdiction of Arizona courts and judgment debtor entitled to sue garnishee on his claim in Arizona, held, though debt was for wages earned and payable in Mexico, it was subject to garnishment in Arizona, provided payment in such manner would be recognized by Mexican courts.—Weitzel v. Weitzel (Southern Pac. R. Co. of Mexico, Garnishee), Ariz., 230 Pac. 1106.

36. **Injunction** — Contempt.—Manufacturer enjoined from operating circular saws or wood planing machinery as nuisance, held not in contempt for operating shaper; petitioner having prompt and efficient remedy by enlargement of decree, if use of such machine was nuisance.—Kennedy v. Frechette, R. I., 126 Atl. 641.

37. **Insurance**—Automobile Indemnity Policy.—To hold company insuring against loss from claims against insured by one injured in operation of his automobile and damages to latter in collision liable as garnishee to injured party in execution proceedings, present fixed liability to pay insured for loss insured against, whether by reason of personal

injuries, for which judgment was recovered, or damage to automobile, must be shown.—Combs v. Hunt, Va., 125 S. E. 661.

38.——Burglary.—In action under policy indemnifying against burglary, larceny, or theft from residence, it was not incumbent on plaintiff to prove that property was lost as result of burglary, or through larceny or other theft, but only to establish facts from which jury was warranted in deducing that property disappeared either through burglary, larceny or theft.—Fidelity & Casualty Co. of New York v. Wathen, Ky., 266 S. W. 4.

39.——Conditional Sale of Automobile.—Where car owner allowed another to take car for an hour or two to try it out, matter of sale to be determined afterward, such transaction was not 'conditional sale" under policy, exonerating insurer from liability for theft while automobile in possession of vendee under "conditional sale," and, where such person never returned with it, such taking constituted "theft," protected by policy; it being either theft by bailee under Pen. Code 1911, art 1348, or theft by fraudulent pretext under article 1332.—Southern Casualty Co. v. Landry, Tex., 266 S. W. 804.

40.——Contract of Sale in Escrow.—Before the loss occurred, the owner of the property insured placed in escrow a contract of sale and deed to the property. The papers so deposited were not delivered until after the loss occurred. Held, that the owner had not transferred his title to or his interest in the property or the policy.—Fuller v. United States Fire Ins. Co., Kan., 231 Pac. 53.

41.——Incidental Work.—Under workmen's compensation policy insuring church employees "engaged in care, custody, and maintenance of premises, * * * excluding extraordinary additions, alterations or repairs," employee, whose general employment was to care for premises, did not lose coverage by performing incidental work in assisting in making alterations to building.—Przybyla v. St. Mary's Church of New York Mills, N. Y., 206 N. Y. S. 783.

42.——Lapse of Policy.—Where policy required premiums to be paid first of each month or within 30 days thereafter, and stipulated that notice that payments were due was thereby given and accepted, company was not estopped to claim lapse of policy from failure to pay premium in view of fact that premiums thereon had been paid for eight years.—Western Life Indemnity Co. v. Bartlett, Ind., 145 N. E. 786.

43.——Loss in Transporting.—Insurer's liability under clause of policy insuring automobile "while being transported in any conveyance by land or water, the stranding, sinking, collision, burning or derailment of such conveyance," held not limited to loss by sinking, etc., of conveyance, rather than of car itself; "sinking," etc., being words of enumeration or description of manner of loss of car.—Importers' & Exporters' Ins. Co. v. Jones, Ark., 266 S. W. 286.

44.——Occupation.—Insurer was not chargeable with knowledge of insured's occupation possessed by a former agent who had no connection with transaction by which insured applied for a policy, and who was not then in its employ.—Murray v. Preferred Acc. Ins. Co., Iowa, 201 N. W. 595.

45.——Ownership of Property.—Fact that mortgagor who had transferred interest in property, but had insurable interest therein because his personal liability as mortgagor would have been increased by loss from fire, in obtaining insurance policy falsely represented that he was unconditional and sole owner, unknown to mortgagee, did not defeat such mortgagee's rights under standard mortgage clause attached to policy.—Federal Land Bank v. Atlas Assur. Co., N. C., 125 S. E. 631.

46.——Representations.—Representations in application for insurance that applicant never had any "infirmity" or "deformity" must be construed as meaning deformity or infirmity of substantial character apparently materially impairing applicant's health and increasing chance of death, which, if known, probably would have deterred company from issuing policy.—Travelers' Ins. Co. v. Pomerantz, N. Y., 207 N. Y. S. 81.

47.——Terms of Policy.—In view of common-law and statutory definitions of burglary and robbery, held words, "to rob insured by force," in clause of accident policy, having to do with kinds of injury for which company is liable "while insured is defending himself against an attack of a burglar or robber, who is attempting to rob insured by force," apply only where the crime committed is robbery, and not where it is burglary.—Clum v. New Amsterdam Casualty Co., Pa., 126 Atl. 810.

48.——Travel Policy.—Insured's death from gunshot wound received while waiting for train on railroad station platform was not covered by travel policy insuring against death while "passenger in or on a public conveyance, including the platform, steps, or running board thereof," in view of further provision that policy did not cover accidents not specifically mentioned.—Dolge v. Commercial Casualty Ins. Co., N. Y., 207 N. Y. S. 42.

49. **Intoxicating Liquors** — Evidence. — Under Burns' Ann. St. 1914, § 2063 (Acts 1905, c. 169, § 192), failure to allege price for which sale of intoxicating liquor was made, did not make affidavit insufficient on motion to quash.—Clark v. State, Ind., 145 N. E. 566.

50. **Landlord and Tenant**—Repairs.—"Where the only ground of a proceeding by a landlord to dispossess a tenant is that the tenant is holding over beyond his term, the tenant cannot set up, by way of recoupment or counterclaim, damages which he alleges he has sustained by reason of the failure of the landlord to repair the premises. If the tenant is in fact holding over and beyond his term, the state of accounts between the landlord and the tenant, growing out of the tenancy at the time the warrant is issued, is entirely foreign to the issue, raised by the dispossessory proceeding, which alleges that the landlord is entitled to retake possession of the property, because the tenant's right to possession has terminated by the expiration of the time to which the contract (and the possession of the tenants) was limited."—Shehane v. Eberhart, Ga., 125 S. E. 506.

51. **Licenses**—For Taxation Only.—Ordinance prohibiting keeping of coal yards without license, which was set at $50 for each yard, plus $10 for each vehicle used by licensee in connection with business, and fine of from $25 to $200 for each offense, held to impose license fee solely to raise revenue, and hence to be invalid.—Aberdeen-Franklin Coal Co. v. City of Chicago, Ill., 145 N. E. 613.

52.——Repair of Highway.—Traction engine used in construction or repair of highway is not "operated upon a highway" within Laws 1923, c. 225, § 6, providing for refund of tax on gasoline not used in motor vehicle operated on highway; "highway" as therein used meaning roadway or driveway that can be used for public travel, and not a mere right of way upon which a road can be, or is being, constructed.—Allen v. Jones, S. D., 201 N. W. 353.

53. **Master and Servant**—Proximate Cause of Injury.—Where switchman undertook to adjust couplers so they would couple by impact by closing coupler on car he had been directed to remove from main track, and was climbing between cars to use lever to open the other coupler when cars were moved toward standing car, and his foot was crushed, failure of railroad to equip its cars with couplers that would couple by impact was proximate cause of switchman's injury and movement of string of cars was not an intervening efficient cause.—Phillabaum v. Lake Erie & W. R. Co., Ill., 145 N. E. 807.

54.——Work on Sunday.—Words "repair shop," as used in Labor Law (Laws 1921, c. 50), § 2, subd. 9, excluding power houses operated by public service corporations other than repair shops from definition of "factory," in view of section 4, refer to separate and independent repair shops, and not to one doing emergency work required by power house used on Sunday solely in operating railroad, and section 161, subd. 1, requiring workmen in factories to have one day of rest each week, was not applicable.—People v. New York Cent. R. Co., N. Y., 206 N. Y. S. 743.

55. **Mines and Minerals**—Competency of Engineer.—Under sections 7542 and 7548, Comp. Okla. Stat. 1921, a hoisting engineer, employed in and about a coal mine, who holds a certificate of competency from the state mining board, is competent and qualified to hold such position, and an employer will be protected by such certificate against allegations of general incompetency not connected with the particular act complained of.—Folsom Morris Coal Mining Co. v. Scott, Okla., 231 Pac. 512.

56. **Municipal Corporations**—Closing Streets.—A city has the undoubted right to close temporarily one or more of its streets (for the purpose of making repairs thereon, or for the safety and convenience of the public) by placing obstructions therein; and where it has so closed one of its streets, and the obstructions are temporary and reasonable in their character, the city will not be liable for per-

sonal injuries resulting from a person driving against such obstructions, unless it further appears that the city failed to exercise ordinary care and diligence in safeguarding the obstructions.—City of Blakely v. Funderburk, Ga., 125 S. E. 602.

57.——Injunction Against.—That petitioner for injunction against construction of municipal electric light plant has competitive plant, caused filing of suits to enjoin issuance of bonds, and will be largely benefited by injunction, does not deprive it of right to invoke equitable power of court, if injury is threatened to its property or interest as taxpayer.—Texas Electric & Ice Co. v. City of Vernon, Tex., 266 S. W. 600.

58. **Partnership**—Building Agreement.—Agreement to build houses, wherein one party agreed to furnish cash and lots, another to act as architect and builder, and a third to attend to clerical work and procuring mortgages, architect to receive $50 per week and each of them to receive one-third of profits on sale of houses, held to create partnership, though there was no specific agreement to share profits and losses as such.—Vincent v. Macbeth, N. Y., 206 N. Y. S. 870.

59. **Railroads**—Frightening Horse.—In action for damages resulting from frightening horse, charge that defendant had right to use the track along the street, and in such use to make the usual noises and emission of steam which were incident to operation of its engine, was not error in absence of request for explanatory charge.—Newsome v. Louisville & N. R. Co., Ala., 102 So. 61.

60.——Negligence.—Whether leaving uncovered a pipe carrying live steam in a mail car upon which plaintiff, a mail clerk at work therein, was burned was negligence, was for the jury.—Bulin v. Great Northern Ry. Co., Minn., 201 N. W. 307.

61.——Strike Duty.—Where railroad guard was hired for strike duty and on pay roll as such, and after arriving at point where strike was in progress, and while going to waiting room to get instructions, told strike mob his business and what he was there for, he was not entitled to that high degree of care for his protection from mob required of public carrier for protection of its passengers.—Schaff v. Bourland, Tex., 266 S. W. 843.

62. **Receivers**—Attorney as Receiver.—Attorney appointed as receiver is usually appointed with view to his knowledge of law and his ability to act in all ordinary matters to protect estate without assistance of outside legal aid, and his commissions are presumed to be full compensation for such services.—Husqvarna Vapenfabriks Aktiebolag v. R. P. Hussey & Co., N. Y., 206 N. Y. S. 873.

63. **Sales**—Contract for Labor.—Where pay for manufacture of lead fittings to be manufactured according to special order in accordance with blueprints and specifications furnished by purchaser was to be on basis of weight, and purchaser furnished all materials, and was to receive all scrap material remaining, in view of Civ. Code, §§ 1739, 1740, relating to application of statute of frauds to "sale" of personal property, such contract was one for work and labor, and not of sale, and, under definition of sale in section 1721, section 1770, relating to implied warranty by manufacturer, does not apply.—United Iron Works v. Standard Brass Casting Co., Cal., 231 Pac. 567.

64.——Notice of Refusal.—Seller, on receipt of notice of refusal to accept goods covered by contract, may ignore notice and make delivery, and, on buyer's refusal to accept, sell them, and date of such sale fixes time for calculation of damages.—Huessener v. Fishel & Marks Co., Pa., 127 Atl. 139.

65. **Search and Seizure**—Warrant.—That the name signed to an affidavit for a search warrant is fictitious is not ground for quashing the warrant, if supported by the facts disclosed by the affidavit. United States v. McKay, U. S. D. C., 2 Fed. (2d) 257.

66. **Statutes**—"New Industry."—A "new industry," within Code 1897, § 2146, authorizing railroad to make contract for special rates in aid of new industries, is one that does not have an established business, and which is struggling for existence, experimenting and hoping.—Hawkeye Portland Cement Co. v. Chicago, R. I. & P. Ry. Co., Iowa, 201 N. W. 16.

67. **Taxation**—Money Lenders.—Subsection 70 of section 2 of the General Tax Act of 1921 (Ga. Laws 1921, p. 58), imposing a tax upon persons negotiating loans and charging a fee or commission therefor, and providing that the tax shall not be required of attorneys at law, who have paid their professional tax, and who shall engage in negotiating loans on collateral other than wages, etc., is unconstitutional, because violative of the clause of the Constitution relative to the uniformity of taxation, etc.—Ewing v. Wright, Ga., 125 S. E. 445.

68. **Workmen's Compensation.**—Arising Out of Employment.—Employee's violation of employer's rules, when not willful or intentional, does not exclude resulting injuries from class "arising out of and in course of employment," nor amount to "willful misconduct," within Workmen's Compensation Act, § 9.—Ex parte Woodward Iron Co., Ala., 102 So. 103.

69.——Course of Employment.—Injury to employee sustained while he was on employer's premises, going from his work, leaving within reasonable time, following a customary and permitted route off the premises, and in the immediate vicinity of his labor, held to arise out of and in the "course of his employment," within Workmen's Compensation Act.—Brink v. J. W. Wells Lumber Co., Mich., 201 N. W. 222.

70.——Course of Employment.—Where employee, whose duty it was to operate air hammer, had been repeatedly instructed by foreman to do no other work, injuries received while doing other work did not arise out of or in course of his employment.—Burch v. Ramapo Iron Works, N. Y., 206 N. Y. S. 868.

71.——Disability Prolonged by Disease.—Extended disability beyond duration of any natural result of comparatively slight injury, prolonged by disease or infection with which claimant was infected, cannot be said to result from the infection, rather than the injury, where previous to injury, disease, or infection was inactive, and was made disabling only by intervention of injury.—Dickson Construction & Repair Co. v. Beasley, Md., 126 Atl. 907.

72.——Safe Place.—Where employee, drilling holes in steel plates, stood 80 feet above ground on plank 12 inches wide, without guard rail, and his wearing goggles as provided by rule of employer would have increased danger of falling, his failure to wear goggles did not preclude recovery for loss of eye under Workmen's Compensation Law, § 28, disallowing compensation because of employee's failure to use adequate protection provided for him; it being duty of employer to furnish reasonably safe place to work.—Cochran v. Canulette Shipbuilding Co., La., 102 So. 198.

73.——Typhoid Fever as "Accident."—Employee of State Highway Commission furnished board and lodging by commission at camp located near place of work, contracting typhoid fever from water furnished, held entitled to compensation under compensation law because of "personal injury by accident;" "accident" being a befalling; an event which takes place without forethought or expectation.—Brodin's Case, Me., 126 Atl. 829.

74.——Volunteer Fireman.—A voluntary fireman responded to a call of a fire on power line pole in an inclosure. The fireman sent for the superintendent of the power company to come and shut off the current by throwing the switch located on the pole. The superintendent came and drove through an open gate into the inclosure, but, failing in his purpose, started to back out of the inclosure to go to another switch at another place, and the gate began to close. The fireman took hold of the gate to keep it from obstructing the exit of the superintendent and, the gate being charged with electricity he was electrocuted; held that the fireman was acting within the scope of his employment.—Stevens v. City of Nashwauk, Minn., 200 N. W. 927.

75.——"Accidental Injury."—Burns, scalds, and salivation suffered by an employee, caused by the use of a substance known as soda ash in the process of sweetening cream, in a hot room, in the creamery of the defendant corporation in the course of his employment, are within the operation of the Workmen's Compensation Act, providing compensation for accidental injuries. In such a case the State Industrial Commission has exclusive jurisdiction in this state to grant relief in an action for damages to such employee.—Ward v. Beatrice Creamery Co., Okla., 230 Pac. 872.